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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/553,450	09/14/2006	Peter Kinsler	2946-1-001	1493
23565	7590	02/25/2009	EXAMINER	
KLAUBER & JACKSON 411 HACKENSACK AVENUE HACKENSACK, NJ 07601			VERBITSKY, GAIL KAPLAN	
ART UNIT	PAPER NUMBER			
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MAIL DATE		DELIVERY MODE		
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<i>Office Action Summary</i>	Application No.	Applicant(s)
	10/553,450	KINSLER, PETER
	Examiner Gail Verbitsky	Art Unit 2855

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 06 November 2008.  
 2a) This action is FINAL.      2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 39-58 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 39-58 is/are rejected.  
 7) Claim(s) \_\_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) Notice of References Cited (PTO-892)  
 2) Notice of Draftsperson's Patent Drawing Review (PTO-846)  
 3) Information Disclosure Statement(s) (PTO/SB/08)  
 Paper No(s)/Mail Date \_\_\_\_\_

4) Interview Summary (PTO-413)  
 Paper No(s)/Mail Date \_\_\_\_\_

5) Notice of Informal Patent Application  
 6) Other: \_\_\_\_\_

#### DETAILED ACTION

##### *Claim Rejections - 35 USC § 103*

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 39-58 are finally rejected under 35 U.S.C. 103(a) as being unpatentable over Yata et al. (U.S. 5000581) [hereinafter Yata].

Yata discloses in Figs. 2-3 a device/ method comprising a combination of a bottle and a temperature sensor occupying/ thermally enclosing (in thermal contact with an apex) a concave space of a base/ bottom of the bottle for measuring/ estimating temperature of the liquid content of the bottle. As shown in Figs., the bottle is in a vertical orientation. The temperature sensor is a resistance bulb/ thermometer. It is inherent that the device could be used when the bottle including the temperature sensor is placed in a container such as fridge, freezer, cooler or incubator (i.e., having different ambient temperature than the content of the bottle). It is inherent, that the temperature could be measured over time.

With respect to the limitation directed to using a device to measure temperature of a wine: it has been used that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations. Ex Parte Masham, 2 USPQ2d 1647 (1987).

With respect to the limitation including using the device when the bottle is in a horizontal position: it is inherent that the bottle could be placed in a fridge in a horizontal position.

*Response to Arguments*

Applicant's arguments filed on 11/06/08 have been fully considered but they are not persuasive.

Applicant states that the wine thermometers never been used with the advantages of the concave base wine bottles. This argument is not persuasive because although Applicant claims a wine bottle thermometer and describes the wine bottle thermometer in the specification, there is no criticality shown in the specification of the use the thermometer only with a wine bottle; the Applicant describes the criticality of the use of the thermometer with a liquid container having a concave base and not necessarily only a wine bottle.

Yata discloses all the limitations claimed by Applicant with the exception that the bottle is a wine bottle. However, this limitation is a functional limitation. The nursing bottle can be potentially used as a wine bottle (for an adult, of course) if someone would fill it out with the wine. As far as the different temperature ranges for the nursing liquid and the wine, as argues by Applicant: A) Applicant has never claimed the particular temperature ranges other than claiming that the bottle could be placed in the fridge, freezer, heated incubator. However, the nursing bottle is also known to tolerate the temperatures of these containers. In addition, please note, that the nursing bottle can contain a cold, hot and room temperature liquid, as well as a wine bottle.

*Conclusion*

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The prior art cited in the PTO-892 and not mentioned above disclose related devices and methods.

FR 2749654 A3 teaches a temperature sensor that is attached to a bottom of a wine bottle.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gail Verbitsky whose telephone number is 571/ 272-2253. The examiner can normally be reached on 7:30 to 4:00 ET.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Edward Lefkowitz can be reached on 571/ 272-2180. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

*Gail Verbitsky*  
*Primary Patent Examiner, TC 2800*

February 02, 2009  
/Gail Verbitsky/  
Primary Examiner, Art Unit 2855